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## Special Report



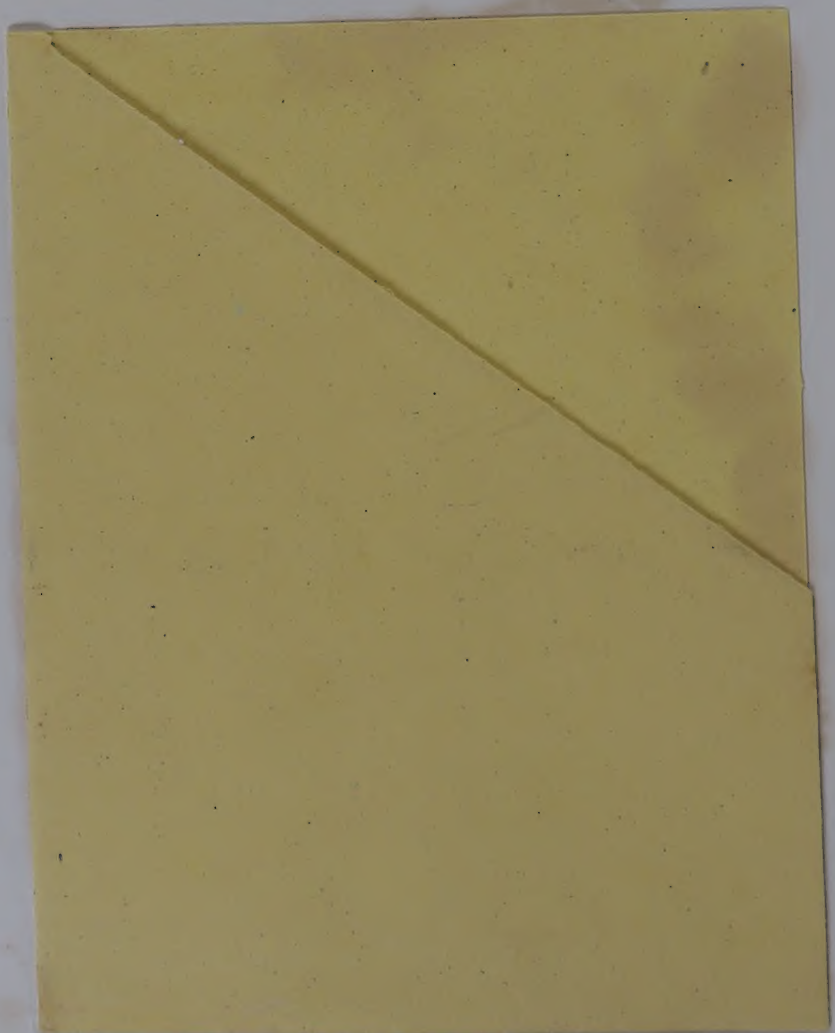
# WE MUST NOT FORGET

A Plea for Justice  
for the Bhopal Victims

International Coalition for Justice in Bhopal



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**Special Report**

**WE MUST NOT FORGET**

**A Plea for Justice for the Bhopal Victims**

**International Coalition for Justice in Bhopal**

July 1987

WE MUST NOT FORGET

A Plea for Justice for the Shogal Victims

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*Cover Photo:* Memorial to the victims of the Union Carbide gas leak in Bhopal, built by Ruth Waterman with the cooperation of the victims and supported by the Dutch No More Bhopals Committee.





## **A Plea Not to Forget...**

The agony of Bhopal is the continuing suffering and neglect of the 200,000 victims of the worst industrial disaster in history. It is now 32 months after the city of Bhopal in India was gassed by a Union Carbide pesticide plant.

The legal resolution of the claims of the victims lies far in the future. The presiding judge in the Bhopal district court in April 1987 described the litigation as still being in its preliminary stages.

Reported out-of-court settlement offers by Union Carbide are grotesquely inadequate to meet the enormous and pressing human needs generated by this disaster. In the meantime, the poor people of Bhopal languish in suffering and neglect, the victims not only of deadly gases from the Union Carbide plant but also the court battle between Union Carbide and the Government of India.

In this Special Report, the International Coalition for Justice in Bhopal documents the record of Union Carbide and the Government of India since that awful night on December 2-3, 1984. We conclude with a plea for a fresh approach to providing interim relief to the victims.

Milan Kundera, the exiled Czech author, observed that "the struggle of man against power is the struggle of memory against forgetfulness." The victims of Bhopal can never forget. The rest of us must not.





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## I. THE URGENCY OF INTERIM RELIEF

Over two and a half years after the gas leak, the Bhopal victims continue to suffer the after effects of their exposure to methyl isocyanate and the other gases which were released. In addition to the immediate impacts on health, there is additional recent evidence of serious long-term consequences of the exposure.

- According to an April 1986 report of the Indian Council of Medical Research (ICMR), in addition to the eye and respiratory problems there is evidence of widespread multi-organ involvement, coma, gastrointestinal disturbances, lesions in the central nervous system, psychological trauma, behavioral disturbances, more frequent aborted fetuses, and retarded intrauterine growth of babies born to exposed mothers.
- The *New York Times* (July 27, 1986) reports that 86,000 people were permanently injured, one-third of them severely. The report mentions 56 still-births (four times the average), 91 infant deaths within the first week of birth (twice the average), 355 spontaneous abortions (three times the average), and long-term damage to liver, kidneys, blood and nervous systems of the victims.
- Another study this year reported that 25 percent of the severely affected population studied showed signs of mutagenesis--an indicator of some cancerous changes (*Madhya Pradesh Chronicle*, February 22, 1986). The Industrial Toxicology Research Center has found evidence of damaged immune systems in survivors, making them vulnerable to infection. The study showed chromosomal changes as well (*New York Times*, October 30, 1985).
- In September it was reported that studies have shown long-term damage to lungs of the affected persons (*Times of India*, September 6, 1986).
- On September 26, 1986, following a meeting of ICMR doctors, Dr. Krishnamurthy reported that a majority of victims had corneal opacity (blurred vision) (*Times of India*, September 27, 1986).
- Most recently, a CBS news program reports that scientists estimate 20 percent of the 200,000 persons exposed to the gases have permanent damage to their lungs and respiratory system. The same program reports that in 12 percent of victims tested, genetic damage has been found. This is six times the normal rate (CBS, *Sixty Minutes*, May 3, 1987).

The plight of the victims is exacerbated by the tactics of Union Carbide and by the deficiencies in relief efforts of the Government of India and of the Madhya Pradesh Government discussed below.





## II. CORPORATE SURVIVAL OVER JUSTICE TO THE VICTIMS

### A) Union Carbide's Campaign to Minimize Its Liability

Beginning shortly after the Bhopal disaster, Union Carbide has attempted to minimize its liability for what occurred. The corporation has used several different tactics to achieve this goal. In addition to designating the Government of India as a co-defendant and accusing it of contributory negligence, Union Carbide has advanced three claims:

1. The leak was the result of sabotage;
2. The plant in Bhopal was designed and controlled by its Indian subsidiary, Union Carbide India Ltd. (UCIL); and
3. The corporation's overall safety record is excellent.

This section looks more closely at each of these claims.

#### The Sabotage Theory

"In addition to the deliberate or inadvertent introduction of a large amount of water into tank 610...the investigation team has identified a number of independent operating events and circumstances which taken together all contributed to the incident in Bhopal." (Opening remarks by Warren Anderson to the March 20, 1985 press conference)

"You may be unaware that the December 1984 disaster was the result of a deliberate act by person or persons unknown. Someone hooked up the methyl isocyanate storage tank directly to a water line and opened the valve." (Letter from Robert A. Seath, director of corporate communications, Union Carbide Canada Ltd., June 25, 1986)

"Our investigations to date demonstrate that the Bhopal tragedy was a deliberate act. Those investigations are now focusing on a specific individual employee of the Bhopal plant who was disgruntled and who had ample opportunity to deliberately inject the large amount of water into the storage tank which caused the massive gas release." (Union Carbide's manager of media relations, as quoted in the *New York Times*, August 11, 1986)

But Union Carbide has never offered any real proof of sabotage. In fact, Union Carbide has been forced to acknowledge the weakness of its sabotage claim.

At a hearing before Congress on March 26, 1985, Warren Anderson said the company had no reason to suspect that the disaster was a result of sabotage. (*New York Times*, March 27, 1985)

"We have convincing evidence" of a deliberate act "even though the proof could be classified as circumstantial." (Bud Holman, an attorney for Union Carbide, as quoted in the *New York Times*, November 18, 1986)





Lawyers familiar with the case, and others who have looked closely at Union Carbide's claims are even more critical of the argument.

"Union Carbide Corp.'s latest charge that sabotage caused the Bhopal poison gas disaster appears to be part of the 'psychological jockeying' aimed at seeking a favorable settlement of the case, lawyers familiar with the litigation say." (*The Wall Street Journal*, August 15, 1986)

The *New York Times*' report on the sabotage claim points out that its own investigation of the causes of the disaster "found that a variety of operating errors, design flaws, maintenance failures, training deficiencies and economy measures contributed to the incident. Many such failings occurred well before the mishap." (*New York Times*, November 18, 1986)

### Denial of Responsibility for Subsidiary

Union Carbide's second line of defense has been to distance itself from its subsidiary, claiming that while it owned the majority of shares, it was not in control. This line of argument has resulted in some embarrassing flip-flops in the corporate line.



Originally attempting to avoid charges of a double standard in its safety practices worldwide, Union Carbide argued that the company's plants in Institute, West Virginia and Bhopal were based on the same design.

On December 12, 1984, Ronald Wishart, Union Carbide's vice president for federal government relations, claimed that the process by which the manufacture of methyl isocyanate was controlled in India was the same as at the West Virginia plant. (*New York Times*, December 13, 1984)





"With respect to our safety standards, we meet the higher of the two, whether it be Union Carbide or the local standard." (Wishart's Congressional testimony following the disaster, as quoted in the *New York Times*, January 3, 1986)

Then, realizing the implications of this for its U.S. operations, the company began to backpeddle.

On December 12, 1984, C.S. Tyson, a Union Carbide inspector, said that the Bhopal plant "is an entirely different setup" from the one in Institute because it has fewer control instruments and uses manual rather than automatic systems. (*New York Times*, December 13, 1984)

The backpeddling picked up speed when it was discovered that a Union Carbide report on safety at its plant in Institute, West Virginia uncovered significant flaws several months before the disaster.

On September 11, 1984, a report by Union Carbide safety inspectors at Institute warned that a "runaway reaction" at a tank storing methyl isocyanate could lead to a "catastrophic failure" of the tank. (*New York Times*, January 25, 1985)

And the distancing began.

On January 25, 1985, Jackson Browning, then vice president for health, safety and environmental affairs at Union Carbide, said that the September 11 report (which speaks of a "real potential for a serious incident") was discussing a "hypothetical scenario" and that "there was no reason to share" the report with managers at Bhopal. (*New York Times*, January 26, 1985)

"Compliance with safety procedures is a local issue. That plant should not have been operating without procedures being followed." (Warren Anderson, asserting that the India subsidiary bears legal responsibility for the accident, as quoted in the *New York Times*, March 21, 1985)

In fact, in the Bhopal instance, it was the decision of the parent company to store MIC in large quantities. It was also the "underdesign" of safety systems by the parent company which resulted in the escape of a large enough quantity of the gas to cause such damage.

"The decision to store [MIC] as opposed to utilizing it on an as needed basis...was an American decision, controlled by Americans.... [T]he entire decision to build the plant was American, the entire decision to dismantle,\* which had been decided prior to this tragedy, was an American decision. All of the technology was a copy, carbon copy of the Institute, West Virginia plant of Union Carbide." (Transcript of hearing before the Second Circuit of the U.S. Court of Appeals, November 24, 1986, page 10)

An affidavit filed in the U.S. courts by a Union Carbide technical representative sent to India to investigate the feasibility of the Bhopal plant states that the parent company

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\*Referring to the dismantling of the Bhopal plant, including some of the safety devices, which was occurring at the time of the disaster. One plan proposed by Union Carbide was to ship the plant to Indonesia where, the company hoped, it would become profitable.



insisted on large bulk storage tanks for MIC (similar to those at the Institute, West Virginia plant) despite the objections of the managers of the Indian subsidiary. Union Carbide India Limited argued that "only token storage was necessary, preferably in small individual containers based both on economic and safety considerations." (Affidavit of Edward Munoz, January 24, 1985, Judicial Panel on Multidistrict Litigation, MDL Docket No. 626)

### **Union Carbide's Health and Safety Record**

"We have had an excellent record for safety; we are among the best in the industry." (Warren Anderson, transcript of Union Carbide Corporation Annual Meeting, April 23, 1986, page 75)

"It's important to understand that health, safety and environmental protection are not simply adjuncts to Union Carbide's main business. Achieving and maintaining a standard of excellence second to none in health, safety and environmental performance is an integral part of our corporate mission, sharing equally with other values that will help to keep us ahead of competitors.

"[Union Carbide's corporate policy on health, safety and environmental protection] says further that Union Carbide will conduct its business in compliance with applicable laws and regulations, and with an abiding concern for the environment and the health and safety of employees and the public at large. In many areas, where Union Carbide deems it appropriate, our action programs go beyond legal compliance requirements. In addition, Union Carbide is exercising its powers and authority as a shareholder, to the extent permitted by the United States and host country law, to assure that the boards of directors of international affiliated companies adopt effective health, safety and environmental policies and procedures. (Union Carbide letter to stockholders, April 7, 1987)

Union Carbide has gone to great lengths to proclaim itself a model of a safe and responsible corporate citizen.

"...corporate policy on health, safety and environmental protection...speaks of a commitment to protect the health and safety of employees, customers, and the public, and of an obligation to be a good world citizen by making a responsible effort to protect the environment and contribute to the well being of each community in which the Corporation has operations." (Union Carbide letter to stockholders, April 7, 1987)

A review of Carbide's safety record at its Institute, West Virginia plant, in the United States, and in other countries, sheds a different light on the company's claims.

#### *Institute, West Virginia*

"An event similar to that at Bhopal could not occur at Union Carbide's Institute, West Virginia plant." (Union Carbide press release, March 20, 1985)

"We said 'no' [referring to the possibility of a leak at Institute] in December based on our experience at Institute, our understanding of the process, and our confidence in our safety systems





and procedures." (Jackson Browning, Union Carbide vice president for health, safety and environmental affairs, as quoted in a Union Carbide press release, March 20, 1985)

- On August 11, 1985, a leak of toxic gas from Union Carbide's Institute, West Virginia plant injured 135 persons. Two days later, another chemical spill occurred at the corporation's Charleston, West Virginia plant. On August 27, 1985 hydrochloric acid leaked from the latter plant. On September 8, 1985, a leak at a plant making methyl mercaptin for Union Carbide injured five persons.



"Union Carbide willfully violated their own company procedures, standard industry practice and federal health and safety regulations." (Patrick Tyson, acting head of the U.S. Occupational Safety and Health Administration, as quoted in the *New York Times*, October 2, 1985)

The U.S. Occupational Safety and Health Administration fined Union Carbide US\$1.4 million for health and safety violations at the Institute plant.

"[The OSHA fine was] a necessary and appropriate response to a situation characterized by complacency and what we believe to be a willful disregard for health and safety. We were just surprised to find conscious, overt, willful violations on such a widespread basis." (U.S. Secretary of Labor William E. Brock, as quoted in *Chemical and Engineering News*, April 7, 1986)

- According to *Chemical and Engineering News* (February 4, 1985), in January 1985, Union Carbide informed the Environmental Protection Agency that during the period 1980 through 1985 a total of





190 assorted methyl isocyanate and phosgene gas leaks occurred at the Institute, West Virginia plant.

- From 1965 through 1973, 86 toxic exposures were documented by Union Carbide involving methyl isocyanate at their Institute plant. (See Box 1 for details.)

#### Box 1

##### Documented Union Carbide Corporation Toxic Exposures to MIC in Institute, West Virginia, 1965-1973

<i>Year of Incident(s)</i>	<i>Total Number of Toxic Exposures</i>
1965	4.
1966	11.
1967	10.
1968	14.
1969	14.
1970	4.
1971	15.
1972	11.
1973	3.

**9 Years Documented in Total**

**86 Exposures in Total**

*Source:* Union Carbide Corporation Internal Correspondence dated December 6, 1973. Subject: Methyl Isocyanate.

#### *United States Record*

- During the last five years a total of 6,928 toxic incidents have been reported by the industry overall as having occurred within the United States (*New York Times*, October 3, 1985). Union Carbide's Institute plant alone has accounted for 3 percent of these.
- In the early 1930s, over 700 workers died of exposure to silica dust working on a Union Carbide project in West Virginia. No protective gear was issued to the workers despite the fact that Union Carbide knew of the levels of silica in the mine. Migrant workers were hired which limited the number of workers who would stay--and eventually die--in the area (Martin Cherniak, *The Hawk's Nest Incident: America's Worst Industrial Disaster* [New Haven: Yale University Press, 1986]).
- In 1979, Union Carbide was fined US\$550,000 for environmental pollution from its Yabucoa, Puerto



Rico plant. In 1981, a report by the U.S. National Institute of Occupational Safety and Health (NIOSH) found that "there may be a significant health risk from exposure to coke dust and pitch fumes in the mill and mixing area, pitch volatiles and fumes in the PI Department, and SO<sup>2</sup> and particulates in the graphitizing area." The final NIOSH report states: "All eighteen workers sampled were found to be working in atmospheres containing measurable levels of polynuclear aromatic hydrocarbons, compounds that are known carcinogens and for which no safe level is now known." (Interim Report No. 1, Health Hazard Evaluation Project No. HETA 81-284-1292, Union Carbide Grafito, Yabucoa, Puerto Rico, revised, February 1984, cited in I. Susser, "Union Carbide and the Community Surrounding It: The Case of a Community in Puerto Rico," *International Journal of Health Services*, Vol. XV, No. 4 (1985):561-583)

- A study by NIOSH in 1981 of workers in Union Carbide's Texas City, Texas plant found 22 deaths from brain cancer among 20 year workers--three times the national average. The plant manufactures vinyl chloride, a chemical associated with brain tumors.

A study by Union Carbide that year showed only 12 brain cancer deaths. The difference: Union Carbide counted only white workers over a short period of time (Agarwal, et. al., *No Place to Run: Local Realities and Global Issues of the Bhopal Disaster* (New Market, Tennessee: Highlander Center, 1985).

#### *World Record*

- From 1973 through 1985, 11 incidents were documented worldwide involving toxic gases (MIC, phosgene, benzene, methyl mercaptin, hydrochloric acid, etc.) at Union Carbide plants in addition to the leaks at the Institute plant in 1985. Excluding the 1984 Bhopal disaster, these incidents resulted in at least 11 deaths and well over 190 injuries. (See Box 2 below for details.)
- As early as 1977, the two trade unions representing workers at Carbide's Beziers, France plant began questioning the safety of the use of MIC in that plant. In 1977, it was necessary for the workers to go on strike to improve health and safety in the plant ("The Bhopal Papers, Report of a Conference on the Bhopal Tragedy," Transnationals Information Centre, July 1986).

Trying to minimize the importance of the Bhopal disaster and in an attempt to reopen its Institute plant following the Bhopal disaster, Union Carbide insisted on the necessity of its pesticide products.

"Without the technology and the capital that multi-nationals help to introduce, developing countries would have little hope of eradicating poverty and hunger. In India alone, it's been estimated that pesticides save about 10 percent of the annual food crop...." (Statement by Warren Anderson at the March 20, 1985 press conference, cited





in the *New York Times*, March 21, 1985)

"The timely startup of the Institute MIC operation is important to the farmers and growers who benefit from carbamate insecticides." (Jackson Browning, as quoted in a Union Carbide press release, March 20, 1985)

## Box 2

### Documented Union Carbide Corporation Toxic Incidents Worldwide, 1973-1985

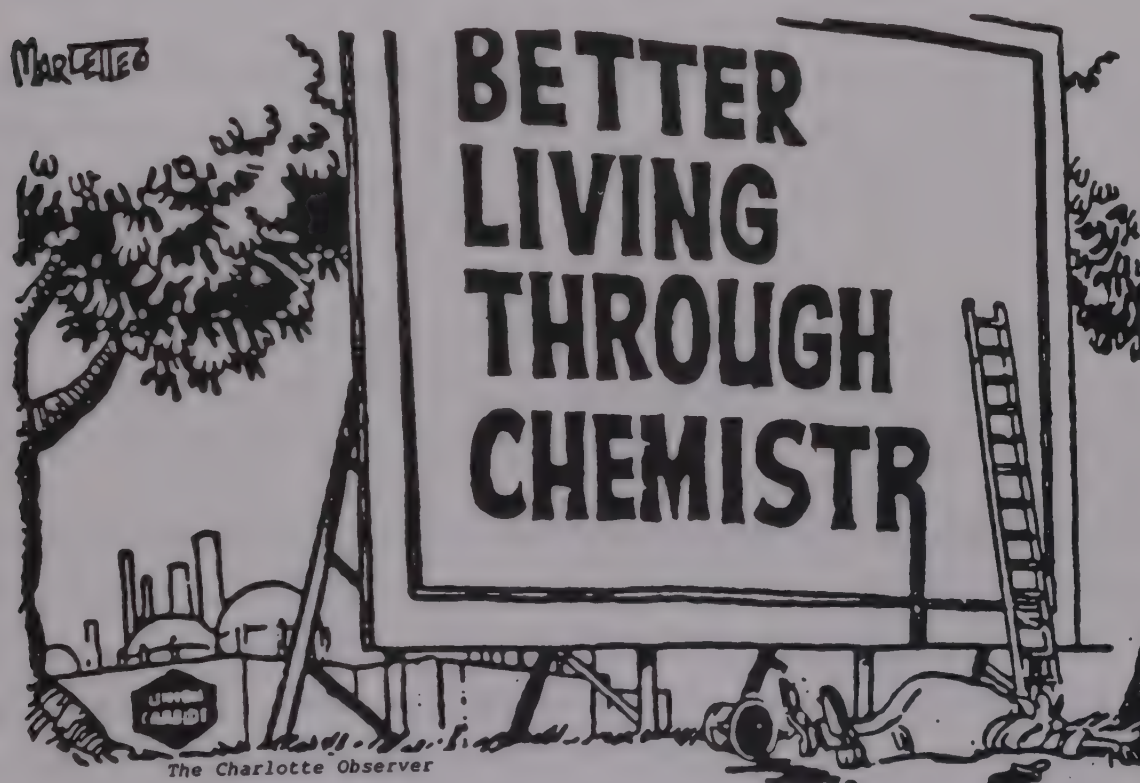
- Ponce, Puerto Rico (1971): One worker was killed by the leakage of benzene gas at a Carbide petrochemical complex. One other worker was seriously injured. Reportedly, three workers were killed as a result of a similar occurrence in 1972.
- Antwerp, Belgium (February 10, 1975): Six workers were killed in an explosion at a Carbide plant. Twenty-five others were injured.
- Bhopal, India (November 24, 1978): An intense and costly fire occurred within an alpha naphthol storage area of the Union Carbide plant.
- Bhopal, India (December 26, 1981): A deadly phosgene gas leak resulted in the death of the plant operator.
- Bhopal, India (January 1982): A phosgene gas leak seriously incapacitated 28 people.
- Bhopal, India (October 5, 1982): Methyl isocyanate based gaseous productions seriously injured four plant workers. Several members of neighboring colonies suffered severe respiratory difficulties as a result of the accident as well.
- Taft, Louisiana (December 11, 1982): A storage tank containing acrolein exploded resulting in the evacuation of 17,000 individuals. Many cases of adverse health effects were reported following the accident.
- Marietta, Ohio (1983): A Carbide Corporation landfill was found to contain 30 times the allowable safe level of dioxin contaminants by the Environmental Protection Agency.
- Bhopal, India (December 2-3, 1984): A runaway reaction of methyl isocyanate in a Union Carbide pesticide plant resulted initially in the death of 2,500 to 10,000 individuals. Upward of 200,000 people were injured.
- Institute, West Virginia (August 11, 1985): Toxic gases leaked from a Carbide pesticide plant despite the addition of new safety systems which were retrofitted in reaction to the Bhopal tragedy. One hundred and thirty-five people were hospitalized. The toxics released were aldicarb oxime and methylene chlorine.
- South Charleston, West Virginia (August 26, 1985): A poisonous hydrochloric acid leak occurred causing road closures but no reported injuries.

Source: Anil Agarwal, Juliet Merrifield, and Rajesh Tandon, *No Place to Run: Local Realities and Global Issues of the Bhopal Disaster* (New Market, Tennessee: Highlander Center, 1985) and various printed media articles.





- On July 7, 1985, 10 million watermelons were ordered destroyed because of Aldicarb (a Union Carbide pesticide) contamination in California. According to the *New York Times* (July 8, 1985), over 100 illnesses were blamed on the contamination.
- Temik, the pesticide manufactured in Bhopal, has poisoned groundwater on Long Island, New York. Some 1,850 wells have been contaminated.
- Michigan authorities issued a warning against drinking water contaminated by Union Carbide's aldicarb pesticide. The *Chemical Marketing Reporter* (September 15, 1986) indicated that a study of 50 women by the state's Health Division found high levels of aldicarb.



## B) Delaying Tactics

Another tactic used by Union Carbide in its legal strategy is to delay the case as much as possible.

- On July 29, 1985, four months after the Government of India brought suit against Union Carbide in New York for the Bhopal disaster, Union Carbide asked for dismissal of all claims filed against it involving the leak, claiming that the United States was an inconvenient site for the trial and that India provided an adequate alternative. This reversed the original contention of Union Carbide that "the suit against defendant No. 1 [Union Carbide Corporation] is not maintainable at Bhopal." (Reply of Union Carbide to *Yunus Farhat vs Union Carbide Corporation*, filed in Bhopal court)



- On May 20, 1986, both Carbide's attorney and the individual plaintiffs' attorneys asked Judge Keenan to alter his May 12 ruling on forum. This followed a five-month delay while Judge Keenan attempted to get the parties to settle out of court. On May 28, 1986, Judge Keenan refused to alter his ruling.
- On June 12, 1986, Union Carbide reserved its right to appeal the Keenan ruling, and on July 10, 1986, Union Carbide appealed one of the conditions of the ruling to the U.S. Court of Appeals.
- On November 17, 1986, Union Carbide filed its response to the Government of India in the Bhopal District Court--six weeks after the deadline given for response by the Bhopal court.
- On January 13, 1987, Union Carbide announced that it had asked the Indian Court to delay the case until after the U.S. Appeals Court had ruled.
- On February 25, 1987, sources close to Union Carbide indicated that the corporation was considering whether to seek to invalidate all of the prior rulings of the judge in Bhopal. (The judge was removed from the case when it was discovered that he had filed a claim for damages in the litigation [New York Times, February 26, 1987].)
- On June 15, 1987, Union Carbide applied to the Bhopal District Court to adjourn the proceedings until October, arguing that while there were still claims pending in the United States, it could not also defend itself in India (New York Times, June 16, 1987).

Delay is not a new tactic for Union Carbide. In a case involving a Union Carbide plant in Puerto Rico, despite reports by the U.S. National Institute of Occupational Safety and Health (NIOSH) and the U.S. Occupational Safety and Health Administration (OSHA) indicating "significant health risk" in 1981, Union Carbide has been able to delay the lawsuit while it initiated a program aimed at deflecting attention from the plant's health and safety record (I. Susser, "Union Carbide and the Community Surrounding It: The Case of a Community in Puerto Rico," *International Journal of Health Services*, Vol. XV, No 4, 1985).

### C) Reducing Capacity to Satisfy a Judgment

Within days of the worst industrial disaster in history, Union Carbide's management was claiming that the Bhopal gas leak would have no adverse impact on the company.

"We have sufficient insurance through third party insurers to cover all liability." (Jackson Browning, director of health, safety and environmental affairs for Union Carbide, two days after the leak, as quoted in the *New York Times*, December 6, 1984).

"[In management's opinion, the Bhopal-related litigation] will not have a material adverse effect on the consolidated financial position of the Corporation.... No charge or accrual is required for any liabilities or for any impairment of assets that may result from





the lawsuits..." (Union Carbide's 1984 Annual Report)

By September 1986, Warren Anderson, chairman of Union Carbide, was claiming that "Bhopal is not a survival issue for the Corporation" and that "the crisis is over for Union Carbide." (Remarks at the International Conference on Industrial Crisis Management, New York University, September 5, 1986)

In 1984, Union Carbide had total assets of US\$9.8 billion. The company's long-term debt was US\$2.3 billion and stockholders' equity was US\$4.9 billion--US\$23.30 per share.

For 1986, total assets were reduced by US\$2.2 billion to US\$7.6 billion. Long-term debt jumped 33 percent to US\$3.1 billion and stockholders' equity declined by US\$3.9 billion to only US\$1 billion--US\$7.87 per share (see Box 3).

### Box 3

#### Union Carbide

#### Financial Position

	1984 (in US\$ millions)	1986 (in US\$ millions)
Total Assets	\$9,788.	\$7,571.
Long-Term Debt	2,293.	3,057.
Stockholders' Equity	4,924.	1,005.
Stockholders' Equity Per Share (in US\$)	23.30	7.87

#### Assets Sales

Included among Union Carbide's assets sales were the corporation's:

- Polymers and composites businesses (to Amoco Chemicals for US\$184 million)
- Film packaging businesses (to Envirodyne Industries for US\$215 million)
- Worldwide metals businesses (for US\$83 million)
- Battery products businesses worldwide (to Ralston Purina for US\$1.4 billion)
- Home and automotive products businesses (to First Brands for US\$800 million)
- Agricultural products businesses (to Rhone-Poulenc for US\$575 million)

The proceeds from the sale of assets by Union Carbide are being used by the company in part to finance and reduce its tremendous debt. Most of the proceeds from the sale of its consumer products division





(some US\$1.1 billion) were to be paid out by the company to its shareholders as special dividend rights--a result of its takeover battle with GAF.

The steps taken by Union Carbide to reduce its assets and equity and incur such a huge debt have been justified by the company's management as necessary in defending itself against the takeover by the GAF Corporation. Whether or not this is actually the case, the result has been a substantial reduction in resources available to satisfy a potential settlement in the Bhopal litigation. They also make more difficult any possible future actions by consumers (such as product boycotts) should such actions be deemed necessary to ensure provision of timely justice to the victims.

Recognizing this, on November 17, 1986, the District Court in Bhopal passed an injunction restraining Union Carbide from further asset divestment. On November 30, 1986, Union Carbide agreed to maintain US\$3 billion in unencumbered assets to meet possible future judgments of the Court.

The Government of India is seeking a minimum of US\$3 billion in damages from Union Carbide. The Citizens Commission on Bhopal, a broad coalition of some 50 environmental, religious, consumer, labor, and medical organizations in the United States, has estimated that compensation for economic losses alone from the disaster would amount to US\$4.1 billion. Union Carbide has offered US\$300-350 million in settlement talks.

#### **D) Containing the Crisis: Union Carbide's Public Relations Campaign**

"The gas leak just can't be from our plant. The plant is shut down. Our technology just can't go wrong. We just can't have such leaks." (J. Mukund, works manager, Bhopal Plant, 45 minutes after the leak, cited in *No Place to Run*)

In addition to its attempts to limit its liability, Union Carbide has launched a major public relations campaign. That campaign has, in addition to emphasizing the company's verbal commitment to health and safety and reiterating its unsubstantiated claims of sabotage, utilized four tactics regarding the victims. Union Carbide has claimed that:

1. The substance leaked could not have caused such damage;
2. It was the victims' fault that they were injured;
3. Evidence showed minimal damage from MIC; and
4. The company's relief and settlement offers were adequate.

#### **Downplaying the Nature of the Substance Leaked**

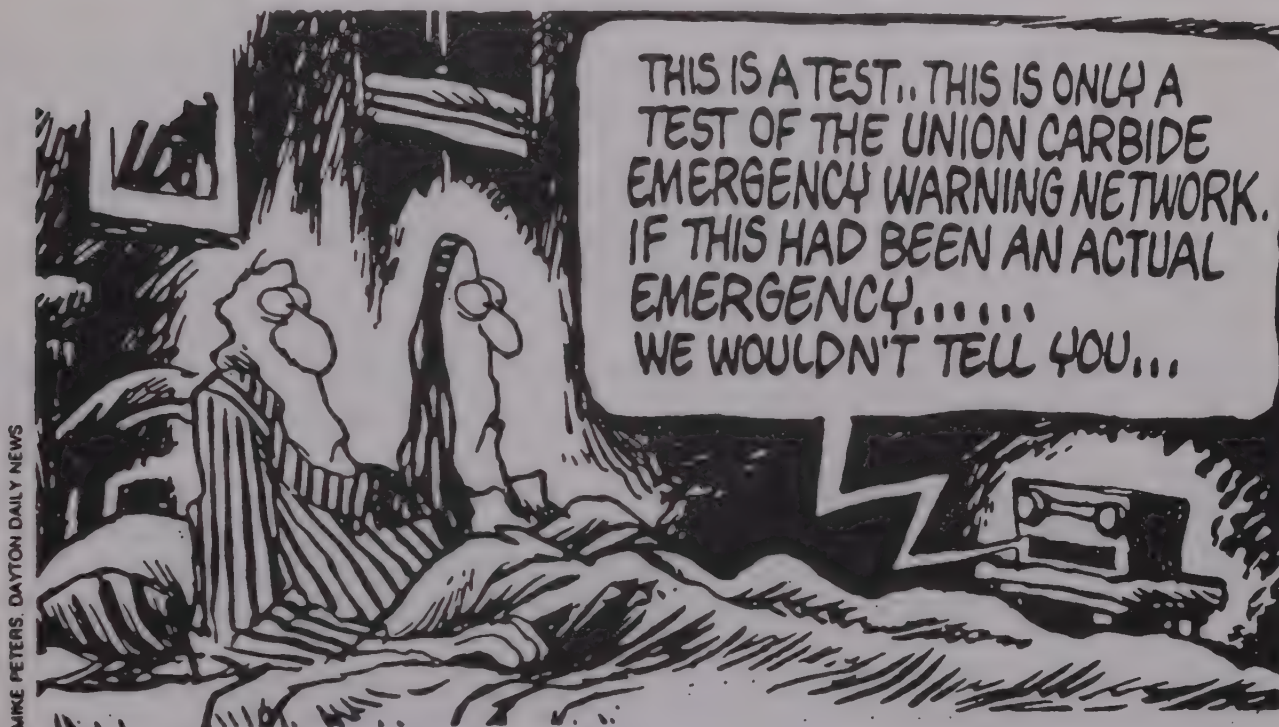
"The gas is non-poisonous. There is nothing to do except to ask patients to put a wet towel over their eyes." (L.D. Loya, medical officer, Union Carbide India Ltd., December



3, 1984, cited in *No Place to Run*)

"MIC is only an irritant, it is not fatal." (J. Mukund, cited in *No Place to Run*)

"While there is no doubt that MIC is a toxic chemical, it is only one of hundreds of such chemicals used throughout the world." (Affidavit of William M. Snellings, made in support of Union Carbide's motion to dismiss the complaint before Judge Keenan)



Submissions by Union Carbide to the U.S. Department of Labor and various studies commissioned by them indicate the company knew better.

"Effects of overexposure: May cause skin and eye burns on contact. Vapors are extremely irritating and cause chest pain, coughing, and choking. May cause fatal pulmonary edema. Repeated exposure may cause asthma." (Material Safety Data Sheet, F-43458A)

"Methyl isocyanate appears to be the most toxic member of the isocyanate family.... [It] is highly toxic by both the peroral and skin penetration routes and presents a definite hazard to life by inhalation." (Results of 1963 research, undertaken for Union Carbide by Mellon Institute, Carnegie Mellon University)

"[MIC] is highly toxic by inhalation, an irritant to humans at very low vapor concentrations, and a potent skin sensitizer." (1970 findings of Union Carbide sponsored research at Mellon Institute)

When it became apparent that MIC was not the only gas which leaked, and that other gases had been formed during the exothermic reaction in the tank, Union Carbide began a campaign to play down the possibility of cyanide or phosgene poisoning. This resulted in another flip-flop in statements.





"If cyanide poisoning is suspected use Amyl Nitrite. If no effect--Sol. Nitrite--0.3 grams + Sol. Thiosulphate 12.5 grams." (Union Carbide Corporation, "Treatment of MIC--Pulmonary Complication," December 5, 1984 telegram, cited in L. Everest, *Behind the Poison Cloud* [Chicago: Banner Press, 1985])

"Indications are that the incident involved methyl isocyanate...and not phosgene or cyanide gas." (Union Carbide press release, December 4, 1984, cited in *Behind the Poison Cloud*)

Since then, Union Carbide has denied the possibility of cyanide poisoning, and has not provided a description of the composition of gases which were released along with MIC.

"Methyl isocyanate (MIC) is not a CYANIDE. It in no way should be confused as such...these two substances have entirely different effect on tissues and human health." (Press release from Union Carbide Corporation)

The evidence indicates that cyanide is indeed a possible result of the decomposition of MIC, and that Union Carbide was well aware of this.

The OSHA guidelines for MIC clearly state that MIC's "hazardous decomposition products [including] toxic gases and vapors (such as hydrogen cyanide, oxides of nitrogen, and carbon monoxide) may be released in a fire involving methyl isocyanate." (OSHA "Occupational Guidelines for Methyl Isocyanate," September 1978)

"Thermal decomposition may produce hydrogen cyanide, nitrogen oxide, carbon monoxide and carbon dioxide." (Union Carbide booklet F-414431-76 No. 17, cited in *Madhya Pradesh Chronicle*, March 26, 1985)

### Blaming the Victim

Union Carbide has attempted to blame the victims for the injuries they received.

"Some have tuberculosis, which is endemic in that area, some have emphysema, which is endemic in that area, some have malnutrition, which is a troublesome thing in that area. Each individual history has to be examined in order to determine what damage he has, or whether he has a claim or not. The claims include a considerable number of fraudulent claims, we expect." (Bud Holman, attorney for Union Carbide, transcript of January 3, 1986 hearing before Judge Keenan, page 22)

"The methyl isocyanate produced a heavy cloud which settled very close to the earth, killing children because of their immature lungs, the elderly because of their diminished lung capacity, those who ran because their lungs expanded too rapidly, and small animals. The survivors included those people who stood still and covered their faces with handkerchiefs...." (Observations of Dr. Peter Halberg, one of three doctors sent to Bhopal by Union Carbide as part of its relief efforts, *New York Medical College Newswire*, February 20, 1985)

The Bhopal disaster was not the first time Union Carbide has blamed the victims for injuries imposed by health and safety violations of the corporation. In 1933, during trials following the discovery that hun-





dreds of workers engaged in a Union Carbide project in West Virginia involving mining of silica were dying of silicosis, the corporation's defense strategy was to allege that the workers were suffering not from exposure to silica but rather from tuberculosis.

"[After working only 26 days in one of the shafts,] this negro is now enjoying notoriety, travel without cost to himself, and the pleasure of making an impression on white people for probably the first time in his life." (Comments by Union Carbide on one of the workers who testified for the plaintiffs, quoted in Martin Cherniack, *The Hawk's Nest Incident: America's Worst Industrial Disaster* (New Haven: Yale University Press, 1986), page 78.

"The Negroes didn't know how to care for themselves. They got sick and died from pneumonia and too much alcohol and poker. Nobody ever proved anything against the company anyway, and it had been blown all out of proportion when you considered all the company had done for those people." (Summary of the attitude of Union Carbide representatives, *The Hawk's Nest Incident*, page 3)

Union Carbide has continued this line of defense after the Bhopal leak:

"The Institute incident was not life-threatening, and it occurred because some people made mistakes...half of the accidents we are involved in occur because there were errors made by operators. It has been reported that a whole host of people were hospitalized. Many people did go to the hospital for one thing or another--eye irritations and so on. About 24 were hospitalized, six of them our own. Had that Institute incident occurred two or three years ago, it would not have been newsworthy." (Warren Anderson, transcript of Union Carbide Annual Meeting, April 23, 1986, page 73)

### Fabricating Evidence

Union Carbide is funding work at three medical organizations in Bhopal. According to activists in Bhopal, these organizations are being funded to fabricate medical evidence to support Union Carbide's case. The three organizations have come out with reports completely at odds with reports of the Indian Council of Medical Research, Medico Friend Circle, and other institutes in India and abroad. The Union Carbide funded organizations claim that most of the injuries predated the leak of MIC or are common to the Bhopal population.

One of the hospitals funded by Carbide claims that "the utter ignorance of the people added to their anxiety to satisfy their basic needs first [and the] unhygienic conditions prevailing in the area" are responsible for the frequency of the prevailing sickness. Another hospital funded by Carbide claims that there is no connection between the eye problems of the victims and the gas leak, except as "a psychological reaction to a big tragedy...." (*Sunday Mail*, September 14-20, 1986)

Again, this is not the first time Union Carbide has used this tactic. A recent study of the Union Carbide Hawk's Nest project, claiming that it was the United States' worst industrial disaster, conservatively estimates the number of dead from silicosis at 764. Yet through its ability to purchase expert medical



testimony, and its influence with the state, Union Carbide was able to bury the entire incident. Medical testimony for Union Carbide claimed that the workers were not suffering from silicosis but from tuberculosis. The X-rays clearly show this not to be true. The "experts" had never examined the plaintiffs (*The Hawk's Nest Incident*, page 62).

As mentioned above, in its report on brain tumors among workers at its Texas City, Texas plant, Union Carbide chose to look only at white workers and ended its study in 1977 (the study was released in 1981). A U.S. National Institute of Occupational Safety and Health report at the same time found twice as many brain cancer deaths (three times the national average) by including minority workers and covering the period up to 1980 (*No Place to Run*, page 19).

### Relief and Settlement Offers

"From the outset, Union Carbide has stated that it takes moral responsibility for the Bhopal incident. UCC and UCIL relief efforts and commitments, which total more than \$20 million, have been prompt, forthcoming, and independent of the more complex matters of compensation." (Union Carbide response to ICJIB letter, February 9, 1987)

"Union Carbide has also offered major humanitarian assistance--with no strings attached and no ties to ultimate litigation awards...." (Jackson Browning, Letter to the Editor, *New York Times*, August 18, 1986)

"On Jan. 17, the Carbide vice president for public affairs told me and two other members of the Citizens Commission on Bhopal that the company would make no further assistance available to the victims unless that help would be offset against the final settlement or court judgment." (Ward Morehouse, Letter to the Editor, *New York Times*, September 15, 1986)

In an April 18, 1985 letter to Bud Holman, attorney for Union Carbide, reviewing Union Carbide's relief efforts for Judge Keenan, a vice president of Carbide states that detail of the emergency aid already provided and specifics on dead and injured would be necessary before any progress could be made on settlement.

Union Carbide's relief efforts, as already discussed, have been directed toward gaining information for its legal defense. Some Indian observers believe that Union Carbide is funding at least three hospitals in Bhopal to fabricate evidence. The doctors sent to Bhopal by Union Carbide have produced no public reports on their investigations, yet, in an April 18, 1985 letter to Judge Keenan outlining UCC and UCIL relief efforts, Carbide claims the US\$129,008 spent on their fees and expenses as "interim relief" for the victims.

Union Carbide's "moral responsibility" for the disaster is also called into question when the levels of compensation proposed in settlement talks are reviewed. Over US\$4 billion is the amount the Citizens





Commission on Bhopal has estimated would be necessary to compensate the victims. The Government of India is asking for over US\$3 billion.

In the first quarter of 1985, Union Carbide offered US\$100 million to cover all relief for the victims. In May 1985, Carbide increased this amount to US\$230 million, and by March 1986, had suggested US\$350 million--over three times its original offer. Yet even this last offer would be mostly covered by the company's insurance, would be payable over an extended period of time and still falls far short of the government figure of US\$3 billion or the Citizens Commission figure of over US\$4 billion.

In August 1985, the Manville Corporation offered US\$2.5 billion for an expected 60,000 claims for damage caused by asbestos. A.H. Robins Company paid US\$520 million to settle 9,450 claims relating to injuries from the Dalkon Shield (*New York Times*, March 23, 1986).

There are over 400,000 claims arising from the Bhopal disaster. It is no wonder that Judge Keenan described the latest Union Carbide settlement offer thus:

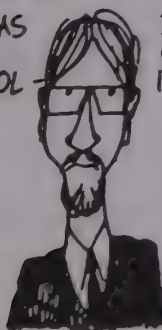
"The globality of the settlement seems to me like it's rapidly assuming the size of a very small marble." (Quoted in the *New York Times*, March 30, 1986)

## E) Coopting Indian Professionals

The capacity of multinational corporations to coopt professionals--legal, medical, or other--in the Third World and indeed elsewhere with fees that are huge by Third World standards and border on personal bribery is enormous.

**Feiffer**

ONCE I WAS  
OUT OF  
LAW SCHOOL



I ACTED  
ON MY  
IDEALS.

LEGAL AID TO  
THE POOR.



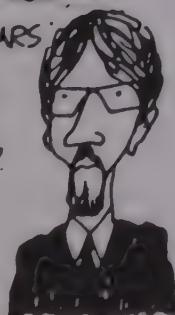
ENVIRON-  
MENTAL  
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PRO-BOND  
CIVIL  
RIGHTS  
AND CIVIL  
LIBERTIES  
LITIGATION.

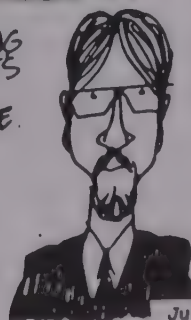


ANTI-NUCLEAR  
LITIGATION.

AFTER TWO YEARS  
OF MORALITY  
NONE OF MY  
COLLEAGUES  
WOULD TAKE  
ME SERIOUSLY.



NOW I'M JOINING  
THE FIRM THAT'S  
DEFENDING  
UNION CARBIDE.



SO I CAN ESTABLISH  
CREDIBILITY.



Jules Feiffer  
Universal Press Syndicate

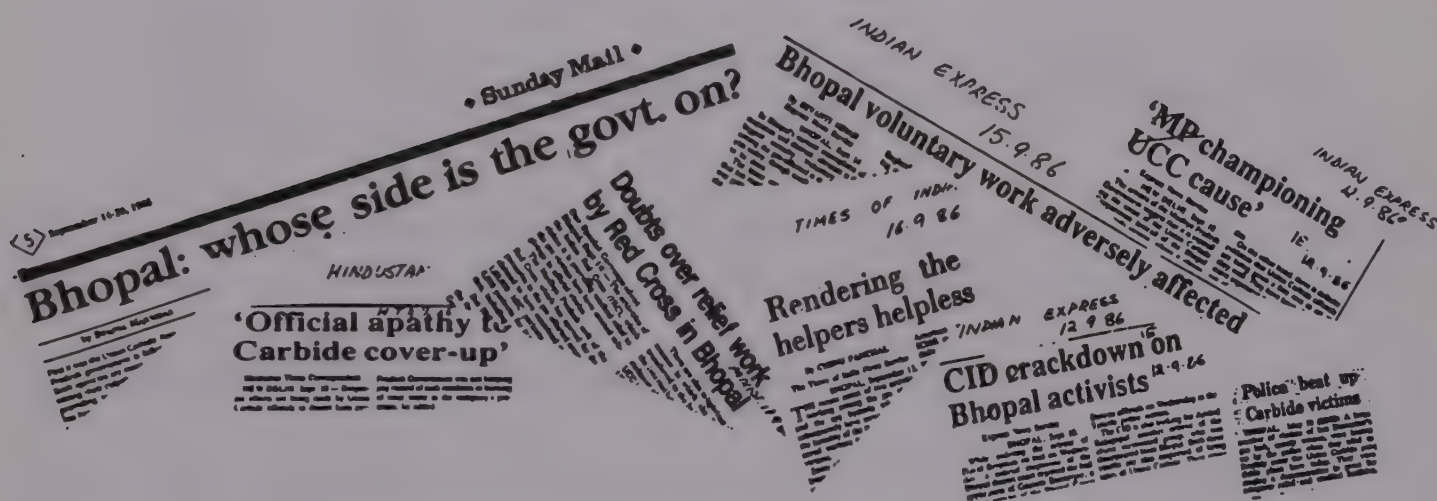




ICJIB reiterates its call upon the Government of India (through its income tax departments and other appropriate agencies) to demand from Indian legal and medical professionals retained by Union Carbide (to assist the corporation's defense of the litigation arising from the Bhopal disaster) a complete disclosure of the financial agreements they have entered into with Union Carbide.

To avoid possible situations of conflict of interest which would adversely affect victims in Bhopal, ICJIB reiterates its call upon Union Carbide to disclose the names of Indian lawyers hired and various medical, legal, or other experts engaged by Union Carbide to help in connection with the litigation against Carbide resulting from the Bhopal gas leak.

### III. GOVERNMENT INDIFFERENCE TO THE PLIGHT OF THE VICTIMS



#### A) The Record Thus Far

Shortly after the Bhopal disaster, the Government of India promised that its relief effort would be "a model for future disasters" and the State Government pledged that its relief effort would be placed "on a war footing" (CBS, *Sixty Minutes*, May 3, 1987).

Two and a half years after the disaster, according to official government estimates, the death toll has risen from some 1,700 to over 2,300 and it is estimated that 86,000 people have been permanently injured (*New York Times*, July 27, 1986 and *The Wall Street Journal*, December 5, 1986), including some 40,000 victims who suffer from permanent, irreversible lung damage. Chromosomal changes foreshadowing the future development of cancers and genetic defects have been detected at a rate some six times higher than normal (CBS, *Sixty Minutes*, May 3, 1987).



Immediately after the disaster, the Government of India made a long list of promises to undertake a major mobilization to rehabilitate the area and its people. Yet a recent report describes such relief efforts as "fragmentary and disorganized" and characterized by bureaucratic apathy and inefficiency (CBS, *Sixty Minutes*, May 3, 1987).

Reports indicate that many victims have not received compensation (for deaths of family members) supposedly distributed by the government. There has been no public accounting of the public monies claimed to have been spent on relief efforts by the Government of India and the State Government.

According to the Mayor of Bhopal, relief for the gas victims is inadequate, no proper diagnosis is being done, and their plight continues. (*Times of India*, September 27, 1986)

The Government of India, on the other hand, claims that it has provided ex-gratia financial aid, medical relief, health services (including mental health), economic and vocational rehabilitation to the victims and protection to the specially vulnerable. (Report of the Madhya Pradesh Government, *Bhopal Disaster and Its Aftermath: Life Is Reasserting Itself*, 1987 and *Bhopal Gas Tragedy: Relief and Rehabilitation--Current Status*, August 1985).

ICJIB sought clarification from the Government of India as to the anomalies described above but no answer has been forthcoming thus far (ICJIB Letter to the Government of India, December 3, 1986).

## **B) Impediments to Voluntary Relief Efforts in Bhopal**

There have been disturbing reports of recurrent repression of victims and of voluntary agencies working with victims in Bhopal:

- **May 18, 1985:** Victims of the gas disaster were beaten up by Bhopal police during a demonstration for relief. Most of the demonstrators were women.
- **May 28, 1985:** The police ransacked a dispensary set up by the volunteers and detained them.
- **June 25, 1985:** Bhopal police attacked victims demonstrating against the lack of relief efforts in Bhopal. Some 35 activists, including six doctors, were arrested for taking part in the demonstrations (*Indian Express*, June 28, 1985). The activists were charged with attacking police with blunt weapons, conspiracy, and attempt to murder (*Times of India*, September 16, 1986).
- **September 5, 1986:** Bhopal police raided the offices of an organization working for relief of child victims and the Bhopal Group for Information and Action (BGIA) and seized documents.

The Madhya Pradesh Government has brought some serious charges against a number of voluntary





agency workers in Bhopal over the past two years, including attempted murder and violation of the Official Secrets Act. ICJIB urges that those accused should either be tried, so that they may have their day in court to answer these charges, or the charges dropped if there is insufficient evidence to sustain them. If charges are dropped, these persons should be compensated for their lost time and for expenses resulting from the charges. The responsibility of government is to protect voluntary workers as it would any other citizens and not harass them and place obstacles in their way. We also urge the Government of India not only to cease obstructing the relief and rehabilitation efforts of voluntary organizations, but also to facilitate, encourage, and promote the efforts of such organizations.

### **C) Government Rejection of Carbide Offers of Interim Relief**

There is widespread agreement that the current relief efforts in Bhopal are inadequate. Union Carbide alleges that these inadequacies are exacerbated by government rejection of various offers from Union Carbide and Union Carbide India Ltd of relief, including:

- An offer that the UCIL factory, grounds, guesthouse, and research center be converted into a hospital, health care center, and park; and
- An offer of US\$10 million to construct a new hospital in Bhopal.

Two buildings (allegedly lacking building permits) were recently demolished by the government. They were being used as a vocational training school (funded by Union Carbide) for some 100 residents of Bhopal. Government vocational schools in Bhopal, it is claimed, are poorly run and poorly equipped (CBS, *Sixty Minutes*, May 3, 1987).

Government-run child care centers in Bhopal suffer from a lack of resources and amenities. An offer from the Red Cross to run all the child care centers in Bhopal at no cost to the government has been rejected. The Red Cross received US\$5 million for relief work from Union Carbide.

There have been serious allegations against some of the voluntary organizations in Bhopal receiving funds from Union Carbide:

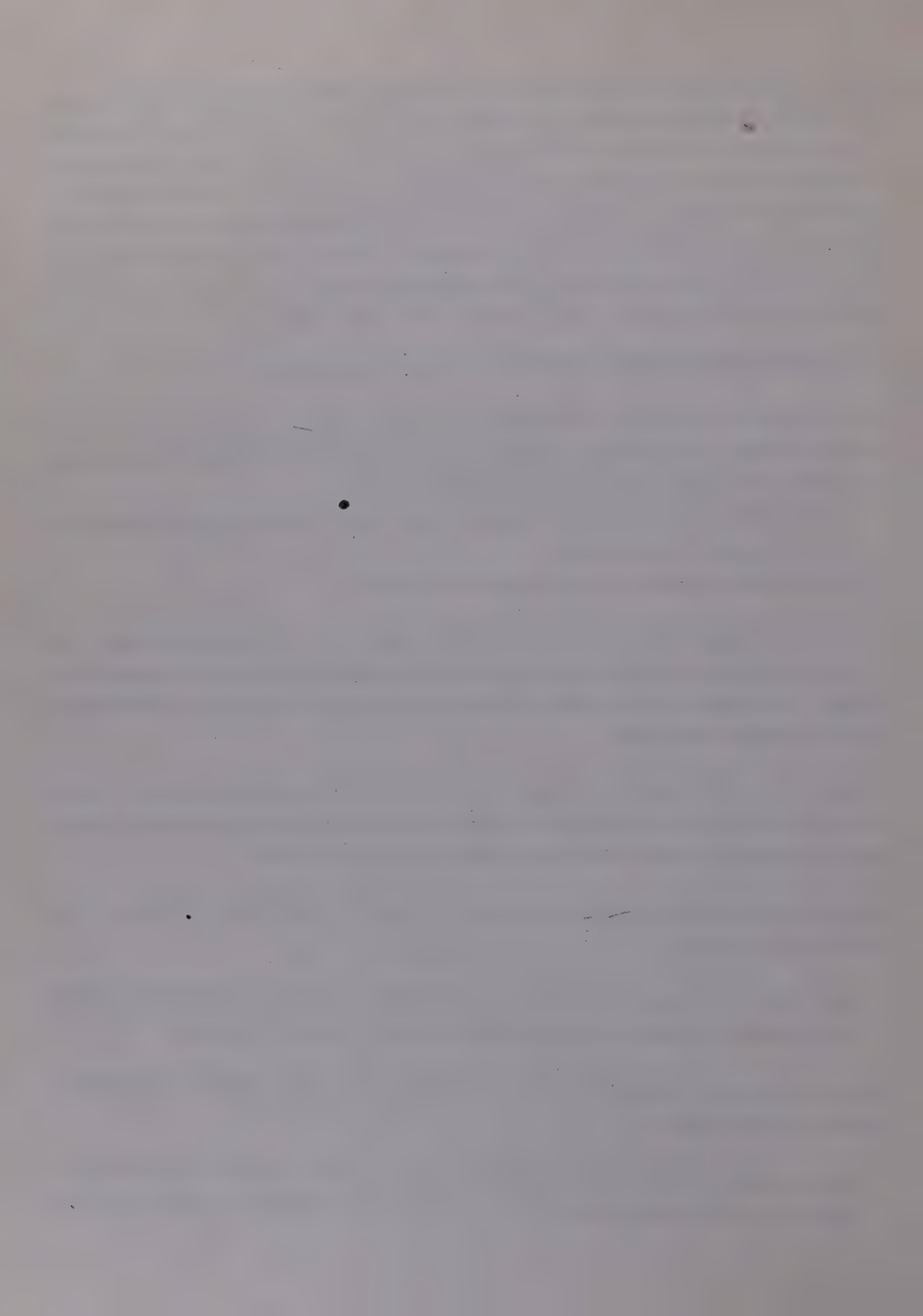
- Union Carbide is funding work at three medical organizations in Bhopal. As indicated above, these organizations are being funded to fabricate medical evidence to support Union Carbide's case.

There have been disturbing allegations of close and continuing links between the Madhya Pradesh Government and Union Carbide:

- The government has allowed Union Carbide personnel and lawyers a free hand in Bhopal, and access to the Union Carbide guesthouse there. Apparently, a team from Union Carbide staying at the

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guesthouse has been attempting to persuade workers to testify on the sabotage issue (*The Sunday Observer*, September 14, 1986).

- It is reported that, in 1985, after the occurrence of the Bhopal disaster, UCIL was awarded a Rs100 million (approximately US\$8 million) contract by the Madhya Pradesh Government for the manufacture and/or distribution of condoms.

In light of the above contradictory statements of the media, and in view of the need to improve the relief effort in Bhopal, ICJIB reiterates its call upon the Government of India for relevant information and clarification.

#### IV. ALLEVIATING THE PLIGHT OF THE VICTIMS

It is a well established principle in Indian, American, and British common law that any party who is responsible for causing such widespread pain and suffering, as Carbide has clearly done in the Bhopal disaster, is under obligation to take immediate steps to mitigate that pain and suffering. Indeed, Carbide has from the beginning admitted "moral responsibility" for the disaster, even while denying legal liability. We therefore commend in the strongest possible way the initiative of the Bhopal judge, M.W. Deo, in whose court the major litigation over the disaster now resides, when he urged in early April that "reconciliatory, substantial interim relief" be provided to the victims. He made the proposal, according to press accounts, because of both the serious plight of the victims and his recognition that the litigation is still, even after almost three years, "in the preliminary stage" and will take many more years before it reaches a point of resolution ("Relief for Gas Victims," *Times of India* [Delhi], April 3, 1987).

But any fresh effort to provide for relief of the victims' distress needs to be designed in such a way as to take into account why past efforts have failed so abysmally. The Madhya Pradesh Government and key medical and social service institutions in the city of Bhopal are widely regarded in Bhopal as being heavily populated, especially in senior positions, by Carbide sympathizers who have no real interest in seeing efforts to help the victims succeed. (Failure of these efforts increases pressure on the Government of India to reach a premature and totally inadequate out-of-court settlement with Carbide before the critical question of liability can be decided. And until that has been determined, there is no possibility that Carbide will agree to a monetary settlement that even begins to do justice to the victims.) Carbide, the only major multinational corporation with a significant manufacturing operation in Bhopal, has for long patronized key figures in the governmental and institutional life of the city with sizable "charitable" contributions to medical and other institutions with which these figures are associated.







The other major obstacle leading to the failure of past efforts is Union Carbide's lack of interest in helping the victims, notwithstanding its repeated assertions that it is prepared to provide assistance "with no strings attached and no ties to ultimate litigation awards" (*New York Times*, August 18, 1986)--a statement which is factually incorrect, in view of the statement by a Union Carbide vice president to members of the Citizens Commission on Bhopal that no such assistance would be provided unless offset against the final settlement or court judgment. If rumors persist that Carbide wants to use its support of interim relief in order to gather medical intelligence about the condition of the victims for use in the courts, it has only itself to blame. The team of American doctors which Carbide sent to Bhopal in the first few days after the gas leak included at least one person notorious for appearing as an industry expert witness in personal injury litigation in the United States. (See Box 4.)

#### Box 4

##### An Impartial Medical Observer?

"UCC moved quickly to sponsor trips to Bhopal by internationally recognized consultants with expertise in pulmonary medicine (Weill, Petty) and ophthalmology (Halberg, later, Gorsich)." ("UCC and UCIL Relief Efforts," Response to ICJIB letter, February 9, 1987)

Union Carbide spent US\$129,008 on fees and expenses for three of the doctors. (Bhopal Interim Relief, May 8, 1985 submission to Judge Keenan)

One of the medical specialists sent by Union Carbide to Bhopal right after the disaster was Dr. Hans Weill, a pulmonary specialist from the Tulane University School of Medicine in New Orleans. According to Paul Brodeur in his *New Yorker* articles on asbestos litigation (June 10, 1985), Weill, who had undertaken studies of asbestos workers for industry in the past, turned up as a witness for one of the defendant companies, Johns-Manville, in the landmark Borel asbestiosis case in Texas in the early 1970s. His testimony that the plaintiff, an asbestos worker named Borel, had never suffered from asbestiosis--based entirely on reviewing chest x-rays and no direct physical examination--was quickly demolished by Borel's attorney who forced Weill to admit that without ever having examined Borel's lung, he was trying to refute the diagnosis of asbestiosis made at first hand by Borel's internist, by the surgeon who had removed Borel's lung, and by the pathologist who had examined tissue from Borel's lung in the hospital laboratory. (Adapted from Ward Morehouse and M. Arun Subramaniam, *The Bhopal Tragedy: What Really Happened and What It Means for American Workers and Communities at Risk* [New York: Council on International and Public Affairs, 1986].)

We need, therefore, a new start in providing genuine interim relief to the victims which takes into account these obstacles. Such an effort cannot depend upon local government agencies and institutions for delivery of services to the victims. And it must have an arms-length relationship with Union Carbide.



